

**NOT FOR PUBLICATION**

**OCT 07 2004**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PONTRELL WILLIAMS,

Defendant - Appellant.

No. 03-10113

D.C. No. CR-01-00434-1-LRH

MEMORANDUM\*

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

PONTRELL WILLIAMS,

Defendant - Appellee.

No. 03-10123

D.C. No. CR-01-00434-LRH

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Submitted October 4, 2004\*\*  
San Francisco, California

Before: RYMER, TALLMAN, and BEA, Circuit Judges.

Pontrell Williams appeals his conviction on one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). The government cross-appeals his sentence. We have jurisdiction to review the final judgment in this case under 18 U.S.C. § 1291, and to review the sentence under 18 U.S.C. 3742(b), and we affirm in part and reverse in part.

## I

Williams argues that the district court should have suppressed evidence of the firearm because officers violated his rights under 18 U.S.C. § 3109 and the Fourth Amendment. Reviewing the denial of Williams's motion to suppress de novo, *United States v. Bynum*, 362 F.3d 574, 578 (9th Cir. 2004), we conclude that under the totality of circumstances, the officers' manner of entry was justified by a reasonable suspicion that knocking would be dangerous. *See id.* at 581-82. The officers did not base their suspicion on the generalized dangerousness of drug

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\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dealers, *see United States v. Becker*, 23 F.3d 1537, 1540-41 (9th Cir. 1994); *United States v. Granville*, 222 F.3d 1214, 1219 (9th Cir. 2000), but on particularized facts: the expected presence of Back Street Crips (BSC) gang members at 1671 North D Street who were known from prior experience to be violent and dangerous, and were believed to be using this location as a drug sale site; the recent murder of BSC members by a rival gang, and the resulting likelihood that BSC members would presently be armed; the posting of lookouts at the premises; knowledge that a lookout at a prior BSC drug sale location had carried a firearm; the presence of a pit bull terrier; and the fortification of entrances with metal security doors. In a prior controlled buy at a drug sale location like this one, a BSC member had pointed a gun at a confidential informant the BSC mistakenly believed to have possibly been an undercover police officer, thereby demonstrating a willingness to use guns against law enforcement agents. Finally, members of the BSC had recently been involved in a deadly shootout with a rival gang over a drug robbery, showing additional readiness to use deadly force to protect their drug business.

## II

Williams next argues that his conviction should be reversed because the district court permitted the court reporter to read back a portion of a government witness's testimony to the jury after deliberations had begun. However, his own witness did not know whether he was wearing a fanny pack, so there was no inconsistency. In any event, the district court gave a precautionary instruction that the jury must base its decision on all the evidence. *See United States v. Sandoval*, 990 F.2d 481, 486-87 (9th Cir. 1993) (holding that the district court did not abuse its discretion by reading back testimony when it gave a similar instruction). The district court acted well within the "great latitude" it enjoys in deciding to allow testimony to be reread. *United States v. Portac, Inc.*, 869 F.2d 1288, 1295 (9th Cir. 1989).

### III

The government cross-appeals the district court's refusal to apply an enhancement pursuant to U.S.S.G. § 2K2.1(a)(4)(A) (2001). We agree that the court's reasoning cannot stand in light of *United States v. Campos-Fuerte*, 357 F.3d 956, 959 (9th Cir.), *amended by* 366 F.3d 691 (9th Cir. 2004), which was published after sentencing in this case. There we held that a violation of California Vehicle Code § 2800.2, as that provision existed in 1992, was a crime

of violence, as that term is defined in 18 U.S.C. § 16(b). The 1992 version of § 2800.2 was identical to the 1990 version that Williams violated. Although § 16(b) pertains to force against “the person *or* property” of another, as does California Vehicle Code § 2800.2, while U.S.S.G. § 4B1.2(a)(2) applies only to “physical injury,” this difference does not matter here because Williams pled guilty to a charge that he drove in disregard for the safety of *both* persons *and* property. *See United States v. Casarez-Bravo*, 181 F.3d 1074, 1077 (9th Cir. 1999) (“In addition to the statutory definition, we may also examine documentation or judicially noticeable facts that clearly establish that the conviction is a predicate conviction for enhancement purposes such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, or the transcript from the plea proceedings.” (internal quotation marks omitted)). Thus, the conduct to which Williams pled guilty “presents a serious potential risk of physical injury to another.” U.S.S.G. § 4B2.1(a)(2) (2001); *Campos-Fuertes*, 357 F.3d at 961 (discussing the reckless disregard inherent in violations of California Vehicle Code § 2800.2). Williams’s argument that his prior conviction is not a crime of violence because it could not be punished by a term exceeding one year fails given that he pled to a felony complaint and was, like the defendant in *Campos-Fuertes*, sentenced to a term of

16 months in custody. Accordingly, Williams's conviction was a crime of violence for purposes of U.S.S.G. § 2K2.1(a)(4)(A).

AFFIRMED IN PART; REVERSED IN PART.